

SERVICE DATE – OCTOBER 6, 2005

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-55 (Sub-No. 656X)

CSX TRANSPORTATION, INC.–ABANDONMENT
EXEMPTION–IN MARION COUNTY, WV

Decided: October 5, 2005

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 17.51-mile line of its Southern Region, Huntington Division East, Fairmont Subdivision, between Barrackville, milepost BS 306.32, and Mannington, milepost BS 319.48, including the Dents Run Spur between milepost BSB 0.00 and milepost BSB 4.35, in Marion County, WV. Notice of the exemption was served and published in the Federal Register on September 8, 2005 (70 FR 53414-15). The exemption is scheduled to become effective on October 8, 2005.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment in this proceeding on September 13, 2005. In the EA, SEA states that the National Geodetic Survey (NGS) has identified 11 geodetic station markers that may be affected by the proposed abandonment. Therefore, SEA recommends that CSXT be required to provide NGS with at least 90 days' notice prior to conducting salvage activities so that NSG may plan for the possible relocation of the identified geodetic station markers.

Comments to the EA were due by September 27, 2005. In addition to the NGS condition, SEA initially recommended that CSXT be required to consult with the U. S. Army Corps of Engineers (USACE) prior to initiating salvage activities to identify potential permitting requirements under section 404 of the Clean Water Act (33 U.S.C. 1342). Subsequently, after the EA was served, SEA received comments from the USACE, which stated that the proposed abandonment would not adversely impact any wetlands or 100-year flood plains and that a USACE permit would not be required. Therefore, based on USACE's comments, SEA now recommends that the USACE consultation condition not be imposed. No other comments on SEA's recommendations were filed by the due date. Accordingly, only the environmental condition requiring CSXT to notify NGS, recommended by SEA in the EA, will be imposed.

On September 20, 2005, the Marion County Commission (MCC) filed a request for issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d), and 49 CFR 1152.29, to enable it to negotiate with CSXT for use of the line for interim trail use. MCC also submitted a statement of willingness to assume full responsibility for management of, for any legal liability arising out of the transfer or use of

(unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. In a response filed on October 3, 2005, CSXT indicated a willingness to negotiate with MCC for interim trail use and rail banking.

Because MCC's request complies with the requirements of 49 CFR 1152.29 and CSXT is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, CSXT may fully abandon the line, provided the condition imposed in this proceeding is met. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes. See 49 CFR 1152.29(d)(2).

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice of exemption served and published in the Federal Register on September 8, 2005, exempting the abandonment of the line described above, is modified to the extent necessary to implement interim trail use/rail banking as set forth below, for a period of 180 days commencing from the effective date of the exemption (until April 6, 2006), and subject to the condition that CSXT notify NGS 90 days prior to conducting any salvage activities so that NGS may plan for the possible relocation of the identified geodetic station markers.
3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
5. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by April 6, 2006, interim trail use may be implemented. If no agreement is reached by that time, CSXT may fully abandon the line.

7. This decision and notice is effective on its date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary